

WICHITA BOARD OF ZONING APPEALS
MINUTES
October 23, 2007

The regular meeting of the Wichita Board of Zoning Appeals was held at 1:30 p.m. on October 23, 2007 in the Planning Department Director's Conference Room, 10th Floor of City Hall, 455 N. Main St., Wichita, Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JOSHUA BLICK
BENJAMIN STIFF arrives at 1:42pm, & JERRY HOGGATT arrives at 1:34pm.

Board members absent:

CHARLES YOUNG

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

City of Wichita staff absent:

SHARON DICKGRAFE– Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ARBERTHA, Recording Secretary

DERRICK SLOCUM, Associate Planner

FOSTER We will start the BZA hearing at 1:32PM on October 23, 2007. We have 3 cases today. Have you read the 9.25.07 minutes? Are there any requests for changes?

BLICK I moved that the minutes be accepted as is and approved.

GREENLEE Seconded

FOSTER All in favor say aye

MOTION CARRIES 4-0 Unanimously

FOSTER We will now hear BZA2007-52.

SLOCUM Good afternoon, I am Derrick Slocum and will be presenting BZA2007-52.
BACKGROUND: A commercial warehouse building was constructed on the subject property at the northeast corner of S. Washington and E. Gilbert in the late 1940's. At the time the building was constructed, the zoning regulations did not require screening from adjacent residential properties. Recently, the original two buildings on the lot have been connected with a new addition, and the value of the remodel to the business exceeds 50 percent of the value of

the existing structure. Therefore, Section VII.C.2 of the Unified Zoning Code (UZC) requires the subject property to come into compliance with existing zoning and landscape regulations as part of the proposed remodeling. The applicant is requesting the variance on the zoning regulations for the screening requirements.

Section IV-B.3 of the UZC requires that screening be provided along the east property line because the property across the alley is residentially zoned. Since the entire property is used for either the building, parking and loading, there is no place on the subject property that screening can be located while still providing some parking and loading on-site. Therefore, the applicant is requesting a variance to waive the screening requirement.

ADJACENT ZONING AND LAND USE:

NORTH	"GC"	Warehouse
SOUTH	"GC"	Warehouse
EAST	"B"	Single-family Residence
WEST	"GC"	Retail Store

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is an older commercial property that was developed at a time when screening was not required. While the property has been improved to an extent that conformance with current regulations is required, the addition will not require any demolition or a complete redevelopment of the site. The addition to connect the two existing structures is not out of character for General Commercial zoning and the new addition would be spaced from the rear property line by 36 feet, while the existing structures are only spaced 18 to 21 feet. The property is in a unique situation that was not contemplated by the non-conformity requirements of the zoning regulations, which requires full conformance with current, more suburban, regulations. There is no change in use and it is anticipate that the rear side of the building will continue to be utilized as a loading area, but the screening requirement will negatively impact how trucks utilize the loading area.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the property has existed in the proposed condition since the late 1940's with no apparent adverse affects on adjacent properties. The existing businesses along this block do not provide screening along the alleyway, with no apparent adverse affects on properties in the area.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as complying with the screening regulations would entail demolishing parts of the existing structure to completely redevelop the rear loading area so that the trucks would not block the alleyway, thus severely reducing the size of the structure and causing a significant expense to the property owners. The business uses the overhead doors on the alley side to load and off load materials into work trucks at the beginning and end of the workday and not the front entry doors. If a screen fence were required, the work trucks would be blocking the alley for portions of the day.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in maintaining the character of the area. The area is developed with commercial structures built near or right up to the property lines with minimal parking that is located in the side and front of the properties and without screening or landscaping, except in the right of way. Complying with zoning regulations in regards to screening would depart from character of the commercial business that are along the alley and the traffic circulation and sight lines would be obstructed for the applicants business and other businesses that utilize the alley for loading purposes.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as among the stated intentions of the regulations is to encourage orderly growth and enhance the quality of life. Requiring compliance with the zoning regulations would result in the possibility blocking an alleyway and creating a possible challenge to emergency personnel by accessing the fence during an emergency situation, which is contrary to the intent of the regulations.

RECOMMENDATION: Should the Board determine that the conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variances to waive the screening requirement be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

SLOCUM Are there any questions of staff?

SLOCUM This house on this lot is split in half. This is the only way to access this house.

SLOCUM Actually, the address is on Ida.

FOSTER Members have any questions?

Good Afternoon, I am Rob Monson agent for Wichita Door Controls. I agree with what the City Staff has stated and what is being recommended.

FOSTER Does anyone have questions? We will confine this discussion to the board. We have five members here and it takes four votes to approve them.

FOSTER This is very unusual. I do not think we ever had a case where we waived the screening on something like this; yet, it seems it very logical to do so in this case.

GREENLEE If it is not broke we can't fix it.

GREENLEE I will move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590 B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions.

ANTHIMIDES Seconded.

FOSTER Are there any discussions? Jess, are we clear on the item number 3 condition?

McNEELY Yes, that is the way we revised it with law's advisement.

FOSTER Okay, all in favor say aye?

Motion Carries 6-0 unanimously

FOSTER We will now hear case number BZA2007-53.

SLOCUM Good afternoon, I am Derrick Slocum here to present BZA2007-53.

BACKGROUND: The applicant requests a variance to allow a sign within the 50-foot sight triangle of an intersection. The St. Mary's Syrian Orthodox Church (applicant) is located on the 0.6-acre subject property at the northeast corner of S. Martinson and W. Maple.

The church is proposing to construct a monument sign that encroaches into the 50-foot intersection sight triangle. Section 24.04.220(t) of the Sign Code for the City of Wichita states; "no portions of a sign that is located within the triangle formed by the imaginary intersection of curb lines at the intersection of two streets, and extending for a distance of fifty feet each way from that imaginary intersection of a curb line of any corner lot, shall be permitted to extend closer than ten feet to grade of adjacent roadway surface." Therefore, due to the sign protruding into the sight triangle, Planning Staff and Traffic Engineering have directed the applicant to obtain a variance to allow the sign to be placed within the sight triangle. During that meeting, the Traffic Engineer did state that as long as the sign was outside of the vision triangle, as stated in Section 11.22.010 of the City of Wichita Municipal Code, that the sign did not present any immediate traffic safety concerns.

The application area is developed with a place of worship (church), with the church facility extending 3 lots north of the subject site. Property north of the site is zoned SF-5, Single-family Residential, developed as a single-family residence. East of the site is zoned SF-5 and TF-3, Two-family Residential, developed with a single-family residence and church. Property west of the subject site is zoned SF-5 and is developed with church parking and single-family residences. The property south of the subject site is zoned SF-5 and B, Multi-family Residential, and is developed with a church and fraternal organization.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5”	Single-family Residence
SOUTH	“B” “SF-5”	Fraternal Institution, Church
EAST	“TF-3”	Duplex
WEST	“SF-5”	Parking

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the church was constructed in 1932, which predates sign regulations. There was a sign, which was removed due to structural issues, that was located in the approximate place where the proposed sign will be located. The side yard is narrow and the existing platted setback would place the sign in such a way as to be near or against the building, thus, reducing the sign’s designed purpose of advertising along Maple Avenue.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the sign variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the sign is being placed where a sign was previously located. The location of the sign will have no impact on surrounding properties since the sign would be located along Maple and Martinson, and the surrounding properties include a parking lot, another church and a fraternal organization. There are no residential structures within 175 feet of the proposed location of the sign.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as complying with the sign regulations would place the proposed sign against the church building, thus, creating increased maintenance and drainage issues. Making the sign look out of place and reducing the effectiveness of the sign in terms of advertising would negatively impact the visual appearance of the sign if the strict application of the sign code were adhered to.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the Traffic Engineer of the City of Wichita believes the sign will not cause any visual impact at this intersection and as long as the vision triangle is maintained, there should be no visual obstructions. The sign will not impact any visual line from Martinson to Maple or from Maple to Martinson.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as among the stated intentions of the regulations is to promote traffic safety. Planning Staff and the City Traffic Engineer do not see any negative impacts in terms of sight disruption or traffic patterns. Requiring compliance with the zoning regulations would result in a sign that would have a negative appearance in relation to the existing church and would not sufficiently identify the church to the public.

RECOMMENDATION: Should the Board determine that the conditions necessary for the granting of the sign variance exist, then it is the recommendation of the Secretary that the

variance to allow a sign within the 50-foot sight triangle of an intersection be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

SLOCUM Are there any questions of staff?

ANTHIMIDES Since it bows out it a little, it does help out with the vision sight triangle situation there.

SLOCUM I thought the same too, it helps out with the vision at that corner.

ANTHIMIDES If there was someone coming on a bike westbound, you would still be able to see him.

FOSTER This indicates that it is 10 feet wide, how high is the sign again?

SLOCUM It is 9.4 feet wide x 6 feet high.

FOSTER I am a little surprise that a taller sign on a pedestal or monopole would be allowed in that vision triangle but not a low one.

SLOCUM As long as it is 10 feet.

FOSTER This is the same as they had before.

SLOCUM Yes.

FOSTER Any other members have any questions for Derrick?

My name is Greg Ferris with me today is the present of the church board Dennis Fairbanks if you have any questions for the church. I am familiar with this church. It is my mother's church. I am here to represent the church because my mom asked me to do it. The new sign is more modern. It does comply with the Delano district size requirements. It is a permissible sign. We have already been through that process to evaluate whether that is true. When I first looked at this, it seems like 50 foot was excessive but as I began to look at the code and met with staff the traffic engineer decided that the sign code was really in conflict with the traffic code. I believe they are going to work towards resolution to bring it into compliance, frankly, because it is unnecessary. Kurt Schroeder was quite surprise to know that his sign code had something different than traffic recommended. I believe in the future this will be remedied and will not be an issue because 50 feet is a bit excessive and not necessary, particularly at this type

intersection. There is a stop sign so any traffic on Martinson would be stopping before entering Maple. There is already a sidewalk as well as the five-foot building setback as you can see in the photo. Therefore I do not see any issues. The only reason it is in the code is for safety. There will be no negative. I included a letter that shows the 5 conditions we complied with along with the staff report concurring with those elements. Therefore this can be approved for a variance. I will be glad to answer any specific question you might have regarding this.

FOSTER Are you in agreement with the conditions Mr. Ferris?

FERRIS Yes sir, we agree with staff presentation.

FOSTER I believe this is the first time that we had this presentation from the traffic engineer. I never realized there was another type vision triangle requirement. Are there any questions on this?

STIFF How is the sign going to be positioned?

FERRIS If you look at your site plan in the presentation, can you go back to the site plan? Derrick can you back up to the slide show in the presentation?

STIFF So, it will be north.

FERRIS I just showed it as ten feet because it was easier to write than the 9.4 feet. At the time they were talking about a slightly larger sign but they brought it back down. That will be the location. You can see where the 50-foot sign will be; the traffic engineer triangle actually is at the sidewalk, which is 9 feet or 8 feet from the edge of the sign. We are well beyond the traffic engineer triangle requirement.

FOSTER How near is the sidewalk?

FERRIS It will be set back 5 feet from the sidewalk. It is set back quite a distance from the city sidewalk and it is 2 or 3 feet from the Church's sidewalk, but 6 or 8 feet from the City sidewalk on the west and a five-foot building setback from the sidewalk to the south.

FOSTER Is this the only sign for the church? There is not one on the front?

FERRIS Correct. This is the only sign. There is no sign on front of the church is there?

PASTOR We have a small, established day sign that is carved in stone.

FERRIS It is the cornerstone of the church and it has the name of the church. It is not really a sign.

FOSTER Are there any more question for Mr. Ferris? Thank you very much Mr. Ferris.

FOSTER Okay, we will confine this to the board members for discussions. Normally I would be a little concerned about this and be very aware that it is a residential street. So, people have to stop there. Given the Traffic Engineers information, which is new to this board as far as I know, I think it is reasonably safe. Any members have discussions?

STIFF I agree with you 100% since it is a residential. What are the speed limits?

SLOCUM 35mph.

FOSTER The two triangles are different. The triangle on the corner is a generic and required automatically. The other one is based on traffic speed and type street and has more variables.

ANTHIMIDES I will move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590 B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions.

STIFF Seconded.

FOSTER Are there any other discussions?

GREENLEE I would agree that the Traffic Engineering Dept get together with OCI to amend this into agreement.

SLOCUM Yes, I discussed this with traffic engineering.

FOSTER All in favor say aye?

Motion carries 6-0 unanimously

BLICK Mr. Chairman I am leaving and will not be present to hear this case. Departs at 2:05pm.

FOSTER We will now hear the case BZA2007-57.

Good Afternoon I am Jess McNeely here to present BZA2007-57. **BACKGROUND:** The applicant requests a variance to eliminate the sign code side setback requirement of 15 feet for a pole sign. The application area is a retail establishment, located on the east side of South West Street, between Douglas and Maple. An existing pole sign on the property sits within a 10-foot wide strip to be acquired by the City for the widening of West Street. Parking spaces and a drive aisle for the site will become constrained with the loss of space for the West Street widening; the proposed sign location is a limited option to keep parking on the site accessible.

ADJACENT ZONING AND LAND USE:

NORTH	“LC“	Retail
SOUTH	“LC“	Retail
EAST	“SF-5”	Single-family residences
WEST	“LC“	Retail

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is staff’s opinion that this property is unique, as the current sign location will be taken for a street widening project. The site is further unique as it is small, and will have no options for relocation of the existing pole sign.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance, eliminating the side setback for signs, will not adversely affect the rights of adjacent property owners. The proposed sign location is at the southwest corner of the site. The property south of the application area has a parking lot between their building and the proposed sign location. Also, the proposed sign location will be approximately 50 feet from the next business sign to the south. Therefore, the proposed sign location should cause no confusion, nor have a negative affect on the adjacent property owner.

HARDSHIP: It is staff’s opinion that the strict application of the provisions of the sign code would constitute an unnecessary hardship upon the applicant, as the code required 15-foot side setback for pole signs would effectively prohibit the applicant from having a pole sign on the West street frontage.

PUBLIC INTEREST: It is staff’s opinion that the requested variance, to eliminate the side setback for signs, would not adversely affect the public interest at this location. Identification of businesses is in the public interest.

SPIRIT AND INTENT: It is staff’s opinion that granting the requested variance, to eliminate the side setback for signs, would not oppose the general spirit and intent of the Sign Code. The spirit and intent of the Sign Code, keeping adequate separation between signs, will still be achieved, as the next business sign to the south is approximately 50 feet from the proposed sign location.

RECOMMENDATION: It is staff’s opinion that the requested variance, to eliminate the 15-foot side setback for signs on this site, would be appropriate in accordance with the submitted site plan. Should the Board determine that conditions necessary to the granting of the variance exist, then the Secretary recommends that the variance to eliminate the 15-foot side setback for signs be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.

3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

McNEELY Any questions for staff?

FOSTER Have the neighbors to the south been notified?

McNEELY Yes, we notified everyone within 200 feet to meet the requirement.

HOGGATT Where is the sign in relation to the pole?

MCNEELY The pole you are speaking of is here. That pole will have to be relocated with the widening of West street. You can see that it sits a couple of feet from the edge of the curb along West street. Exactly where the telephone will be relocated, I do not know; but the telephone pole will stay within street right-of-way. Probably inside the sidewalk along the street frontage, and the property owners sign will be on his property on the other side of the sidewalk. There will be a minimum of a sidewalk separation between utility pole and the applicant's pole sign. Does that answer your question?

HOGGATT The pole has an ability to block the view of the sign. Has that been taken into consideration?

FOSTER Perhaps, we can ask the applicant whether he is aware of what would happen to the pole.

MCNEELY Unfortunately, we have worked with traffic on this and I am not aware of what will happen with the poles with the widening of West Street.

FOSTER Will we receive more cases because of the widening of the street?

MCNEELY This property owner is the one losing the most frontage. If you will look at the zoning picture you will see that this property happens to stick out 10 feet further west than his neighbors. When this frontage was platted, possibly this property platted first, they did not take as much right-of-way. You can see most of the other properties sit back 10 feet from this one. So I do not believe any other properties on this side of West Street will lose any frontage similar to this property.

FOSTER Does anyone have questions?

STIFF How will the proposed sign affect the parking?

McNEELY The propose sign will go in the far SW corner. That is the current existing landscaping space and will continue to exist as unpaved space. This sign will not affect the parking. That is the only place on this site that you can have the sign along the street frontage and not in necessary parking or drive space.

STIFF With the 10 feet taken away will that cut down parking spaces?

McNEELY As I understand, it will cut down the width of their drive aisle.

FOSTER Thank you Jess, we will call upon the applicant.

I am Brian Suellentrap. I am the property owner there. Jess did a good job explaining it. To reiterate, the City's purchase of the 10 feet is the cause for this variance. Our biggest concern was where will our sign go? We met Jantzen, who is in charged of this site, and Jan Lister. They took it back to property management and this is basically what they came up with. So, they recommended that we go through this process to assist with the placement of the sign as not to affect our customer parking. This City project is way over due so we are willing to work with the city. I will answer any questions.

FOSTER Mr. Hoggatt has a question about the pole. Will it cause any problems?

SUELLENTRAP. We have sat down with the Baughman Company to look at the plans. I do not know whether they know for certain where everything is going to end up. The worst-case scenario, we hope they push it back so it will be in-line with our sign. So it will not cause any conflict with the viewing of our sign. Also, we heard that it may be removed all together. It is hard to say what the utilities company will do with the pole. They say they will do what is required but what they actually do remains to be seen.

STIFF Are there any other adverse affects for your business?

SUELLENTRAP I am in agreement with what staff says. If we do not get the variance, not having the sign would be a big impact to our tenants there. If we put the sign in the middle of our parking lot, we lose half of our nine spots. Basically all of the parking is in front of the building. Or we do not put the sign up at all.

FOSTER All of the businesses along there have a sign out front. Thank you Mr. Suellentrap. I hope you included the variance fee to their acquisition.

SUELLENTRAP Yes, we did.

FOSTER I will confine the discussion to the board. What do you have to say?

STIFF It seems as if it will be a really tight fit.

ANTHIMIDES I don't think they have much of a choice.

GREENLEE I think it is a tight fit now problem.

FOSTER I think the main purpose of the 15 feet is to keep away from the adjacent sign. The adjacent sign is not there so we are okay in that sense.

GREENLEE I will move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590 B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions.

ANTHIMIDES Seconded

FOSTER All in favor say aye?

Motion carries unanimously 5-0

FOSTER Next we will have our enlightening report from Central inspections.

Herb Shaner, I am with the office of Central Inspections. We have a closing on BZA 2006-86. Variance to allow an on-site sign 35 feet in height instead of 25 and allow a hundred sixty square foot instead of a hundred, and waive separation distance of one hundred fifty and this board passed on it, this is the Cotillion Ballroom sign at 11120 W Kellogg. It was passed and installed and it looks fine and is not a problem for anyone. I am done.

GREENLEE Well you drug your feet long enough.

FOSTER Okay, no questions for Herb? For our new members, sometimes we get questions related to how a case has been carried out. The next item, Jess has a report on it for us.

McNEELY The training workshop on Agenda item number 6. I worked with Sharon Dickgrafe our legal counsel. She had intended to give you a workshop today on a couple of items because we have several new board members. She specially wanted to talk about exparte communication. She wanted to talk about enabling legislation for BZAs' and the requirements for a variance. She is out ill today and went home. She told me we would have some legal assistance here today for this meeting. However, no one showed up. Apparently, we are okay with out it. She will give this training workshop at our next meeting. We will have a November meeting, we have had one case filed.

FOSTER I am glad that she is giving this workshop. How long do you think the workshop will take?

McNEELY She said it will take about 20 minutes and she will have handouts for the member to keep and review.

FOSTER I think this is a good idea. The Board, did have a year ago or more, did have discussion about exparte conversations and we had people coming to our house and leaving

things in the mailbox. Things such as that cause a need to discuss this matter so we all will know what the rules are. Any further discussions? Do we have a motion to adjourn?

GREENLEE I move to adjourn.

ANTHIMIDES Seconded.

FOSTER We cannot dispute an adjournment.

Adjournment 2:28pm